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IN THE SUPREME COURT

STATE OF ARIZONA

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|----------------------------|---|-------------------------------------|
| PETITION TO AMEND RULE 22, |) | |
| ARIZONA RULES OF |) | |
| PROBATE PROCEDURE |) | Supreme Court No. R-14-_____ |
| |) | (expedited consideration requested) |
| _____ |) | |

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 22 of the Arizona Rules of Probate Procedure. The proposed change will implement a new statutory provision included in Laws 2014, Chapter 261, HB 2322.

I. Background of the Proposed New Rule. House Bill 2322 was passed in the Second Regular Session of the Fifty-first Legislature (2014). HB 2322 adds A.R.S. § 13-609, and amends A.R.S. §§ 13-925, 13-3101, 14-5303, 14-5404, 14-5307, 32-2612, 36-509, and 36-540.

This legislation furthers goals of the National Instant Criminal Background Check System (“NICS”), which was established in the 1990’s by the Brady Handgun Violence Prevention Act. NICS is a database used by federal firearms licensees to determine whether a prospective buyer is eligible to purchase firearms or explosives. Licensees are able to access NICS, and if a prospective buyer’s background information contains prohibitive criteria, the licensee must deny the purchase. Prohibitive criteria include persons who have been adjudicated mentally incompetent.

II. The Proposed Change to Rule 22.

Newly enacted A.R.S. § 14-5303(F), which is the basis of the proposed rule, requires the court to make a “specific finding” when appointing a guardian “as to whether the appointment of a guardian is due solely to the ward’s physical incapacity.” Unless the court enters such a finding, the new legislation requires the superior court to transmit case information and the date of the guardian’s appointment to the Supreme Court. The Supreme Court must then transmit this information to the Department of Public Safety, who in turn is required to transmit the information to NICS.

Rule 22 of the Arizona Rules of Probate Procedure deals with orders appointing guardians, conservators, and personal representatives. The proposed

amendment would add a sentence to Rule 22(A) concerning the new “specific finding.” The proposed amendment is shown in the Appendix to this petition.

III. Preliminary Comments. This petition has not been sent to the court communities for pre-filing comments because of the short period of time since enactment of the legislation.

IV. Request for Emergency Adoption. HB 2322 has an effective date of December 31, 2014, and action on this rule petition is required before the effective date. Pursuant to Rule 28(G) of the Rules of the Supreme Court, Petitioner accordingly requests expedited adoption of the proposed rule changes with a formal comment period to follow.

RESPECTFULLY SUBMITTED this 16th day of July, 2014

By /s/_____
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Appendix

Proposed Rule 22A, Arizona Rules of Probate Procedure

Additions are shown by underline

Rule 22. Orders Appointing Conservators, Guardians, and Personal Representatives; Bonds and Bond Companies; Restricted Assets

A. **Orders.** Every order appointing a conservator or a personal representative shall plainly state the amount of bond required. Neither letters of conservator nor letters of personal representative shall be issued to any person until any required bond has been has filed with the clerk of court. Every order appointing a guardian shall include a specific finding as to whether the appointment of a guardian is due solely to the ward's physical incapacity. Every order appointing a conservator, guardian, or personal representative shall include the following language: "Warning: This appointment is not effective until the letters of appointment have been issued by the clerk of the superior court."

B. through D. [no changes]